

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

01/14/2009

HON. SUSANNA C. PINEDA

CLERK OF THE COURT

E. Rosel

Deputy

IN RE THE MARRIAGE OF
CYNTHIA LEE THIMMESCH

TERI D MCCALL

AND

PETER ALLAN THIMMESCH

PETER ALLAN THIMMESCH
11337 STONEHOUSE PLACE
POTOMAC FALLS VA 20165

FAMILY COURT SERVICES-CCC

MINUTE ENTRY

This matter came before this Court on Father's July 2008 Petition to Modify Child Support. Father filed his Petition indicating that circumstances have changed requiring that this Court revisit the issue of child support.

Father presented evidence that he is a general partner is with iplabs LLC. He earns a base salary of \$16,000.00 per month. In addition to this salary, he receives employee benefits from his employer in the form of insurance coverage for he and his family, including the two minor children that are subject of this hearing and he receives nanny/au pair services at no cost to him. This Court notes that Father's wife is employed by the same company and receives the same benefits. This Court can only look at Father's income, and thus, divides this nanny employment benefit by two to determine what portion is income to Father. That amount is \$2,352.50 per month. Additionally, Father receives a proportion of the company's profits each year in the form of profit sharing. Although the company made no profits in the early years of its existence, it has made profits over the past three years. Most, if not all of the profits have been distributed to the companies' "partners," including Father. Using an average of the past three years profits distributed to Father, his monthly income from yearly bonuses is \$5,602.00. As a

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result, this Court attributes to Father a monthly income is \$23,955.37. *See* A.R.S. § 25-320.5.A (defining gross income to include income from any source.)

Father also testified that he receives employer paid insurance with a monthly premium of \$92 for the minor children that are the subject of his Petition. Father has four other children for which he provides support. Father acknowledges that his parenting time is 75 days per year, or 10.5%.

Mother is an accountant. In July 2008 she was laid off from her job. Although she has made numerous attempts to find employment, she has not been unable to find employment in today's tight employment market. Prior to the loss of her job, Mother earned approximately \$5,000.00 per month. Mother asks that this Court attribute to her no more than minimum wage given her inability to find employment. Father asks that the Court attribute to her income of \$5,000.00 per month.

Pursuant to A.R.S. §25-320.5.E, if a parent is unemployed, the Court may consider the reasons for such unemployment. If a parent's income is reduced as a matter of choice and not for reasonable cause, the Court may attribute income to a parent up to his or her earning capacity. Here, there is no evidence that Mother voluntarily left her employment, instead, she was laid off and has been in search of employment in her field. This Court is required to attribute *at least* minimum wage to a parent who is capable of employment. This, however, is a minimum amount that must be attributed, and does not preclude the Court from considering other factors, including the parent's education level, the market conditions for their service, etc. Here, Mother is an accountant by profession and earned approximately \$30 to \$32 per hour in her former job. Mother testified that she had one job interview for which she was "over qualified." Given Wife's struggle to find employment at her old salary and given her education level, this Court attributes to Wife an hourly wage of \$20.00 per hour. This Court notes that Mother is no longer receiving spousal support, as a result no income from spousal support will be included in the calculation.

In applying the above-listed findings, under the Arizona Child Support Guidelines,

IT IS ORDERED that Father shall pay child support to Mother in the total amount of \$1,704.28 per month plus handling fee, retroactive to August 1, 2008. All payments shall be made through the Support Clearinghouse via an automatic Order of Assignment issued this date. Father is advised that until such time as the Order of Assignment becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

LET THE RECORD REFLECT an electronic Order of Assignment is initiated electronically.

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IT IS FURTHER ORDERED that Father shall be credited for any overpayment in child support for the period beginning August 1, 2008 and ending January 31, 2009.

All obligations for child support for each shall terminate upon a finding of this Court that the child is no longer a special needs child when the children each attain the age of 18 years or is otherwise emancipated, but in the event the/any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which said child is actually attending high school but only until the child reaches 19 years of age. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. §25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided herein vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

EXCHANGE OF INCOME INFORMATION

The parties shall exchange income information every 24 months from the date of the entry of the Decree of Dissolution of Marriage for so long as Father has an obligation to pay child support. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

MINOR CHILD'S INSURANCE

To the extent that either party incurs medical bills for the minor children, the parties will be required to pay those bills in proportion to their income.

IT IS ORDERED that any non-covered medical, dental, orthodontic, optical, prescription expenses as well as deductibles and co-pays shall be paid 85% by Father and 15 % by Mother.

Given that Mother submits the children's medical expenses to Father for reimbursement,

IT IS ORDERED that Father shall reimburse Mother within 14 days of submission of any medical receipt for any treatment or medication provided to the minor children.

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TRAVEL

Father asks that this Court reduce his responsibility for travel expenses for the minor children in the parties' long-distance parenting plan. Given the incomes as determined above,

IT IS HEREBY ORDERED denying Father's requests for reallocation of travel expenses involving the minor children and affirming all prior orders pertaining to these costs.

ATTORNEY'S FEES

Both parties seek attorney's fees in this matter. Arizona Revised Statute § 25-324(A) provides that, "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings," the court may order one party to pay a reasonable amount of attorneys' fees and costs expended by the other party in litigating the matter. Reviewing the factors above, this Court finds that neither party is entitled to attorney's fees.

IT IS ORDERED that each party be responsible for their own attorney's fees and costs.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HON. SUSANNA C. PINEDA

JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet, Child Support Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.